

# The Vermont Statutes Online

## Title 18: Health

### *Chapter 38: LEAD POISONING*

#### **§ 1751. Definitions**

(a) Words and phrases used in this chapter or in rules adopted pursuant to this chapter and not defined herein shall have the meanings given to them in the Federal Residential Lead-Based Paint Hazard Reduction Act of 1992. In the event of inconsistency between meanings given in such federal act and meanings given in this chapter, the federal act shall apply except where meanings given in this chapter serve to narrow, limit or restrict the applicability of a word or phrase, in which cases the narrower meaning shall apply.

(b) For the purposes of this chapter:

(1) "Abatement" means any set of measures designed to permanently eliminate lead-based paint hazards in accordance with standards established by appropriate state and federal agencies. The term includes:

(A) the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil; and

(B) all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(2) "Certified inspector" or "licensed inspector" means an individual who has been trained by an accredited training program and certified by the department to perform the duties of an inspector or risk assessor.

(3) "Child care facility" means a day care facility or family day care home as defined in 33 V.S.A. § 4902 that was constructed prior to 1978.

(4) "Commissioner" means the commissioner of the department of health.

(5) "Comprehensive environmental lead inspection" or "inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

(6) "Department" means the department of health.

(7) "Deteriorated paint" means any interior or exterior lead-based paint that is peeling, chipping, chalking, flaking, or cracking or any lead-based paint located on an interior or exterior surface or fixture that is damaged or deteriorated.

(8) "Dwelling" means:

(A) a single-family dwelling, including attached structures such as porches and stoops; or

(B) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

(9) "Independent dust clearance" means a visual examination and collection of environmental samples, including dust samples, by a licensed inspector in whose firm or corporation the owner of the property to be inspected has no financial interest. The licensed inspector shall use methods specified by the department and analysis by an accredited laboratory to determine that lead exposures do not exceed limits set by the department utilizing current information from the U.S. Environmental Protection Agency or the U.S. Department of Housing and Urban Development.

(10) "Interim controls" means a set of measures designed to temporarily reduce human exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards and the establishment of management and resident education programs.

(11) "Lead-based paint" means paint or other surface coatings that contain lead in excess of limits established under section 302(c) of the Federal Lead-Based Paint Poisoning Prevention Act.

(12) "Lead contractor" means any person engaged in deleading or lead hazard reduction as a business and includes consultants and inspectors who design, perform, oversee or evaluate lead hazard reduction projects.

(13) "Lead-based paint activities" means:

(A) in the case of target housing, risk assessment, inspection, and abatement.

(B) in the case of any public building constructed before 1978, identification of lead-based paint and materials containing lead-based paint, deleading, and demolition. The term "lead-based paint activities" may be further limited or restricted by rule adopted by the secretary.

(14) "Lead-based paint hazard" or "LBP hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that has deteriorated or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as defined by the department using current information from the U.S. Environmental Protection Agency or the U.S. Department of Housing and Urban Development.

(15) "Lead-based paint hazard control" or "LBP hazard control" or "lead hazard control" means a measure or set of measures designed to control or eliminate human exposure to lead-based paint hazards through methods that include interim controls, abatement, and complete removal.

(16) "Lead poisoning" means a confirmed blood lead level in a child six years of age or

younger greater than or equal to ten micrograms of lead per deciliter of whole blood, unless the commissioner finds by rule that a higher or lower concentration is necessary to protect public health.

(17) "Occupant" means any person who resides in, or regularly uses, a dwelling, car dwelling unit, or structure.

(18) "Owner" means any person who, alone or jointly or severally with others:

(A) Has legal title to any dwelling or dwelling unit or child care facility with or without accompanying actual possession thereof; or

(B) Has charge, care or control of any dwelling or dwelling unit or child care facility as agent of the owner or guardian of the estate of the owner. An agent of the owner does not include real estate and property management functions where the agent is only responsible for the property management and does not have authority to fund capital or major property rehabilitation on behalf of the owner.

(C) For purposes of publicly-owned property only, the owner shall be the chief executive officer of the municipal or state agency which owns, leases or controls the use of the property.

(D) A person who holds indicia of ownership in a dwelling or dwelling unit or child care facility furnished by the owner or person in lawful possession for the primary purpose of assuring repayment of a financial obligation shall not be considered an owner unless such person has taken full legal title through foreclosure, deed in lieu of foreclosure or otherwise. Indicia of ownership includes interests in real or personal property that are held as security or collateral for repayment of a financial obligation such as a mortgage, lien, security interest, assignment, pledge, surety bond or guarantee and includes participation rights of a financial institution used for legitimate commercial purposes in making or servicing the loan.

(E) Owns a building in which a child care facility is located or owns the child care business, although the owner of the child care business may not own the building.

(19) "Rental target housing" means target housing offered for lease or rental under a rental agreement as defined in 9 V.S.A. § 4451. "Rental target housing" does not include a rented single room located within a residential dwelling unit in which the owner of the dwelling unit resides.

(20) "Risk assessment" means an on-site investigation by a licensed inspector or risk assessor to determine and report the existence, nature, severity and location of lead- based paint hazards, including information gathering about the age and history of the property and occupancy by children under the age of six years, visual inspection, limited wipe sampling or other environmental sampling techniques, other appropriate risk assessment activities and a report on the results of the investigation.

(21) "Secretary" means the secretary of the agency of human services.

(22) "Severely lead-poisoned" means a confirmed venous blood lead level in a child six

years of age or younger that is greater than or equal to 20 micrograms of lead per deciliter of whole blood or as defined by the commissioner.

(23) "State inspector" means the commissioner or any person who is authorized in writing by the commissioner to conduct inspections for the department.

(24) "Target housing" means any dwelling or dwelling unit constructed prior to 1978, except any 0-bedroom residential dwelling unit or any residential dwelling unit located in multiple-unit buildings or projects reserved for the exclusive use of the elderly or persons with disabilities, unless a child six years of age or younger resides in or is expected to reside in that housing. "Target housing" does not include units in a hotel, motel or other lodging, including condominiums, that are designed and rented for transient occupancy for travelers or vacationers and not intended to be used as a primary residence. (Added 1993, No. 94, § 3; amended 1995, No. 165 (Adj. Sess.), § 2; 1997, No. 37, § 1.)

**§ 1752. Accreditation of training programs; certification and licensure of environmental lead inspectors and lead contractors, supervisors and workers**

(a) No later than six months after promulgation of final federal regulations under section 402 of the Federal Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the department shall develop a program to administer and enforce the lead-based paint activities training and certification standards, regulations, or other requirements established by the administrator of the federal Environmental Protection Agency for persons engaged in lead-based paint activities.

(b) The secretary shall adopt emergency rules, and not later than January 1, 1994, the secretary shall adopt permanent rules, establishing standards and specifications for the accreditation of training programs both within and outside Vermont, including the mandatory topics of instruction, the knowledge and performance standards that must be demonstrated by graduates in order to be certified, and required qualifications for training programs and instructors. Such standards shall be designed to protect children, their families, and workers from improperly-conducted lead-based paint activities, and shall be at least as protective of human health and the environment as the federal program. Hands-on instruction and instruction for identification and proper handling of historic fabric and materials shall be components of the required training.

(c) The commissioner shall certify risk assessors, designers, laboratories, inspectors, lead contractors, supervisors, abatement workers, and other persons engaged in lead-based paint activities when such persons have successfully completed an accredited training program and met such other requirements as the secretary may, by rule, impose.

(d) After the adoption of rules pursuant to subsection (b) of this section, no person shall perform lead-based paint activities without first obtaining a license from the commissioner. The commissioner may grant a license to a person who holds a valid license from another state.

(e) Nothing in this chapter shall be construed to limit the authority of the secretary, the commissioner of health, the commissioner of labor and industry, or the commissioner of environmental conservation under the provisions of any other law. (Added 1993, No. 94, § 3.)

**§ 1753. Accreditation and license fees**

(a) The commissioner shall assess fees for accrediting training programs and for certifications, licenses, and license renewals issued in accordance with this chapter. Fees shall not be imposed on any state or local government or nonprofit training program and may be waived for the purpose of training state employees.

(b) Each accredited training program and licensee shall be subject to the following fees:

Training courses =sr \$400.00 per year

Lead contractors =sr \$500.00 per year

Lead workers =sr \$ 50.00 per year

Supervisors =sr \$100.00 per year

Inspectors =sr \$150.00 per year

Risk assessors =sr \$150.00 per year

Designers =sr \$150.00 per year

Laboratories =sr \$500.00 per year

(c) Fees imposed by this section shall be deposited into the lead paint abatement accreditation and licensing special fund. Monies in the fund may be used by the commissioner only to support departmental accreditation, certification, and licensing activities related to this chapter. The fund shall be subject to the provisions of subchapter 5 of chapter 7 of Title 32. (Added 1993, No. 94, § 3; amended 1997, No. 155 (Adj. Sess.), § 59, eff. April 29, 1998; 1999, No. 49, § 189; 2001, No. 65, § 6.)

**§ 1754. Public education**

(a) Beginning January 1, 1994, the commissioner of health shall prepare and distribute clear and simple printed materials describing the dangers of lead poisoning, the need for parents to have their child screened, how to have a child tested, and recommended nutrition and housekeeping practices. The commissioner shall work with persons and organizations involved in occupations that may involve lead-based paint hazards or childhood lead poisoning to distribute the materials to their clients, patients, students, or customers, such as realtors, subcontractors, apartment owners, public housing authorities, pediatricians, family practitioners, nurse clinics, child clinics, other health care providers, child care and preschool operators and kindergarten teachers. The commissioner shall also identify those points in time or specific occasions when members of the public are in contact with public agencies and lead might be an issue, such as building permits, home renovations, and the ANFC and WIC programs, and make the materials available on these occasions.

(b) The commissioner shall prepare an appropriate media campaign to educate the public on lead poisoning prevention. The commissioner shall encourage professional property managers, rehab and weatherization contractors, minimum housing inspectors, social

workers, and visiting nurses to attend education and awareness workshops.

(c) The commissioner shall develop a program or approve a program, or both, to train owners and managers of rental target housing and child care facilities and their employees to perform essential maintenance practices. The names and addresses of all persons who attend the approved training program shall be maintained as a public record that the commissioner shall provide to the department of housing and community affairs. (Added 1993, No. 94, § 3; amended 1995, No. 165 (Adj. Sess.), § 3.)

#### **§ 1755. Universal access to screening**

(a) Not later than November 1, 1993, the commissioner shall publish the results of the department's lead poisoning prevalence study. Not later than January 1, 1994, the commissioner shall publish guidelines establishing the methods by which and the intervals at which children under six years of age are recommended to be screened and tested for lead poisoning, according to the age of the children and their probability of exposure to high-dose sources of lead. The guidelines shall take into account the recommendations of the U.S. Centers for Disease Control and the American Academy of Pediatrics. The commissioner may also recommend screening for lead poisoning in other high risk groups.

(b) Not later than January 1, 1994, the Vermont commissioner of banking, insurance, securities, and health care administration shall recommend to the general assembly whether lead screening should be a common benefit under the universal access proposals it has presented, and, if so, how such benefits should be financed. The cost of implementing the Vermont commissioner of banking, insurance, securities, and health care administration's plan under this chapter shall be included in the unified health care budget to be adopted by the authority effective July 1, 1994.

(c) Beginning July 1, 1994, all health care providers who provide primary medical care shall ensure that parents and guardians of children below the age of six are advised of the availability and advisability of screening and testing their children for lead poisoning in accordance with the commissioner's guidelines.

(d) Any health care provider or employee thereof making the diagnosis of lead poisoning shall report such diagnosis to the department within such time and using such format as the department shall prescribe. Any laboratory in Vermont which analyzes blood samples of children below the age of six for lead levels shall report to the department such information on blood lead analyses as the department may require including data on the number and results of blood lead analyses performed by the laboratory. All health care providers who use laboratories outside Vermont to analyze blood samples of children below the age of six for lead levels shall report to the department such information as the department may require including data on the number and results of such blood lead tests. The commissioner shall establish procedures to ensure the confidentiality of the children and families.

(e) After the guidelines established pursuant to subsection (a) of this section have been in place for two years, the commissioner shall determine the percentage of children below the age of six who are being screened in accordance with those guidelines. If fewer than 75 percent of such children are receiving such screening, the secretary shall adopt rules to require that all health care providers who provide primary medical care to young children shall ensure that their patients are screened and tested according to the commissioner's

guidelines beginning January 1, 1997. Such rules shall provide that no screening or testing shall be required pursuant to this subsection if the parent or guardian of the child objects to the child undergoing blood lead screening on the grounds that such screening conflicts with their moral or religious tenets or practices. (Added 1993, No. 94, § 3; amended 1995, No. 180 (Adj. Sess.), § 38(a).)

#### **§ 1756. Annual report**

(a) The commissioner shall, at least annually, analyze and summarize all aggregate lead screening and testing information provided by physicians, health care facilities and laboratories and provide this information to all other local and state agencies involved with case management and lead hazard reduction.

(b) The commissioner shall also at least annually provide to the general assembly, the health community, and the general public an analysis and summary of such data and a progress report on the commissioner's efforts to prevent lead poisoning in young children in a format that is easily understandable to nontechnical readers. The report shall include:

(1) The number and percentage of children under the age of six who have been screened and tested for lead poisoning, and the number found to have lead poisoning at various levels.

(2) Estimates of the public and private costs incurred since July 1, 1993 to prevent, correct, or treat lead poisoning.

(3) An analysis of barriers to universal blood screening of children under the age of six years.

(4) The commissioner's recommendations for action. (Added 1993, No. 94, § 3.)

#### **§ 1757. Lead poisoned children**

(a) Upon receiving a report that a child under age six has been diagnosed by a qualified physician to have lead poisoning, the commissioner shall take prompt action to confirm the diagnosis.

(b) If the child is severely lead poisoned, the commissioner shall provide for inspection of the dwelling unit occupied by the child or the child care center the child attends, by a state inspector or licensed private inspector. The commissioner may inspect and evaluate other dwelling units in a building in which a severely lead-poisoned child has been identified as living and it is reasonable to believe that a child under the age of six occupies, receives care or otherwise regularly frequents other dwelling units in that building.

(c) The commissioner shall work with the parents, owner, physician, and others involved with the child to develop a plan to minimize exposure of the child to lead hazards.

(d) Concerning target housing which is rented or leased, on or before January 1, 1994, the secretary with the concurrence of the commissioner of housing and community affairs shall adopt rules to implement this section including rules which assure that prompt action will be taken to confirm a lead poisoning diagnosis, to inspect the possible sources of lead poisoning, and to secure voluntary compliance or to take necessary enforcement action.

Enforcement action shall include providing the child's parents or guardians and the owner of the dwelling unit with appropriate educational materials on lead poisoning prevention and may include requiring the owner of the dwelling unit to initiate interim controls or abatement of lead-based paint hazards within a specified time.

(e) Nothing in this section shall be construed to limit the commissioner's authority under any other provision of Vermont law. (Added 1993, No. 94, § 3; amended 1995, No. 165 (Adj. Sess.), § 4.)

#### **§ 1758. Housing registry**

(a) The department shall issue certificates to all persons who satisfactorily complete a training program on performing essential maintenance practices for lead-based hazard control and shall compile a list of those persons' names.

(b) If additional funds are appropriated to the department in fiscal year 1998, on or before October 1, 1997, the department of housing and community affairs shall establish and maintain a list of housing units which (1) are lead free or (2) have undergone lead hazard control measures and passed independent dust clearance tests. The registry shall be maintained as a public record.

(c) The department of social and rehabilitation services shall identify all child care facilities in which the owners have completed essential maintenance practices or lead hazard control measures and provide the findings to the department annually. (Added 1995, No. 165 (Adj. Sess.), § 5.)

#### **§ 1759. Essential maintenance practices**

(a) For the purposes of this section, all paint is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. All owners of rental target housing and child care facilities shall perform the following essential maintenance practices on their property:

(1) Take all reasonable precautions to avoid creating lead hazards during any renovation, remodeling, maintenance or repair project that disturbs a lead-based painted surface pursuant to guidelines issued by the department. The guidelines shall include the following requirements:

(A) A prohibition against lead-based paint removal by burning, water blasting, dry scraping, power sanding, or sandblasting, unless authorized by the department.

(B) Use of good work practices and safety precautions to prevent the spread of lead dust, including limiting access to work areas to workers, covering the work area with six mil polyethylene plastic or the equivalent, wearing of protective clothing by workers, protecting belongings of occupants by covering or removing them from the work area, misting painted surfaces before disturbing the paint and wetting sweeping debris.

(C) At the conclusion of the work, specialized cleaning of the work area shall be performed using methods designed to remove lead dust and recommended by the department.



(2) Perform visual on-site inspections of all interior and exterior surfaces and fixtures of the building to identify deteriorated paint and install window well inserts into all windows, or protect window wells by another method approved by the department, no later than July 1, 1998; thereafter, visual on-site inspections shall be performed annually and upon a change of tenant.

(3) At each change of tenant, and annually in units in which a child six years of age or younger resides clean all window wells and window sills within the unit and in all areas of the building to which access by tenants is not restricted by the rental agreement. The cleaning shall be accomplished by using cleaning methods, products and devices that are effective in the removal of lead-contaminated dust and recommended by the department.

(4) Promptly and safely remove or stabilize lead-based paint if more than one square foot of deteriorated lead-based paint is found on any interior surface located within any area of the building to which access by tenants is not restricted by the rental agreement or on any exterior porch or an exterior wall, surface or fixture within the exterior porch. An owner shall restore the surfaces to be free of deteriorated lead-based paint within 30 days after deteriorated lead-based paint has been visually identified or within 30 days after receipt of a written or oral report of deteriorated lead-based paint from a tenant or from an owner of a child care facility. If exterior repair work is identified after November 1 of any year, the repair may be delayed for completion until no later than May 31 of the following year.

(5) If more than one square foot of deteriorated paint is found on any exterior wall surface or fixture not covered by subdivision (4) of this subsection and is located in an area frequented by children six years of age or younger in warm weather, the owner shall:

(A) promptly and safely repair and stabilize the paint and restore the surface; or

(B) prohibit access to the area, surface or fixture to assure that children will not come into contact with the deteriorated lead-based paint.

(6) Provide written LBP hazard information prepared or approved by the department to current and prospective tenants and current and prospective owners of child care facilities.

(7) Post, in a prominent place in buildings containing rental target housing units or a child care facility, a notice to occupants emphasizing the importance of promptly reporting deteriorated paint to the owner or to the owner's agent. The notice shall include the name, address, and telephone number of the owner or the owner's agent.

(8) Attend a training program offered or approved by the department. The training, which shall be available to any person who repairs, remodels or renovates property, shall be attended by the owner, the owner's property manager, or a representative of the owner's regular maintenance staff.

(9) Ensure that any person who performs essential maintenance work has completed a department-approved training program or is being supervised on-site by a person who has completed the training program and complies with the essential maintenance practices.

(10) At each change of tenant, the owner shall clean all horizontal surfaces, except ceilings, within all areas of the building used by tenants and not otherwise restricted by the rental

agreement. This cleaning shall be done by using cleaning methods, products and devices prescribed by the department that are effective in cleaning up lead-contaminated dust, such as vacuum cleaners with HEPA filters, and wet-cleaning with trisodium phosphate or other lead specific detergents.

(b) When the essential maintenance practices are completed, the owner shall sign an affidavit indicating that, to the best of the owner's knowledge and belief, the essential maintenance practices have been performed, the dates they were completed, and by whom they were performed. The owner shall file the affidavit with the owner's liability insurance carrier and the department. Annually, the owner shall conduct a visual check, perform required essential maintenance practices, and sign and file an affidavit as required by this subsection. (Added 1995, No. 165 (Adj. Sess.), § 6; amended 1997, No. 37, §§ 2-4.)

#### **§ 1760. Certification; rules; report; future department action**

(a) No later than January 1, 1997, the secretary shall adopt rules that establish methods and practices to be used by licensed inspectors who certify that target housing and child care facilities are lead free or have had lead-based paint hazards identified and controlled and have passed independent dust clearance tests. The rules shall include the duration of validity of any certifications and requirements for renewal of certifications.

(b) By January 1, 1999, the secretary shall report to the general assembly on the need for additional essential maintenance practices or other actions to further prevent lead poisoning in children based on significant:

(1) Reductions in the number and percentage of poisoned and severely lead-poisoned children.

(2) Increases in the number and percentages of owners of rental target housing that have performed essential maintenance practices.

(3) Increases in the number and percentage of housing units that have achieved higher levels of lead hazard control.

(4) Advances in lead poisoning prevention technology.

(5) Impact of public education efforts in reducing the lead levels of children at risk.

(c) After July 1, 2000, the secretary may adopt rules for the low cost and cost effective implementation of the essential maintenance practices established in section 1759 of this title and additional recommended low cost and cost effective essential maintenance practices and other actions to further prevent lead poisoning in children. (Added 1995, No. 165 (Adj. Sess.), § 7.)

#### **§ 1761. Duty of reasonable care; negligence; liability**

(a) Owners of target housing and owners of child care facilities shall take reasonable care to prevent exposure to, and the creation of, lead-based paint hazards. In an action brought under this section, evidence of actions taken or not taken to satisfy the requirements of this chapter, including performing essential maintenance practices, may be admissible evidence

of reasonable care or negligence.

(b) Any person who suffers an injury proximately caused by an owner's breach of this duty of reasonable care shall have a cause of action for appropriate equitable relief.

(c) A person who is severely lead poisoned as a result of a violation of the duty of reasonable care before the age of six, or a parent, legal guardian or other person authorized to act on behalf of that person, shall have a cause of action to recover damages and other appropriate relief.

(d) The owner of target housing or a child care facility who has reduced lead-based paint hazards by completing risk assessment and controls and who has had a licensed inspector certify, pursuant to rules under section 1760 of this title, that identified lead-based paint hazards have been controlled in target housing or child care facility premises and the housing or facility contains no lead-contaminated dust shall not be liable for injury or other relief claimed to be caused by exposure to lead during the time period covered by the certification.

This immunity does not apply if:

- (1) there was fraud in the certification process; or
- (2) the owner violated conditions of the certification; or
- (3) the owner created lead-based paint hazards during renovation, remodeling, maintenance, or repair after the certification; or
- (4) the owner failed to respond in a timely fashion to notification that lead-based paint hazards may have recurred on the premises.

(e) A defendant in an action brought under this section has a right of contribution from any other person or persons who have violated subsection (a) of this section.

(f) The remedies provided under this section shall be the exclusive remedies against owners arising from lead-based paint hazards, except for the following:

- (1) causes of action under 9 V.S.A. chapter 63;
- (2) causes of action for relief under 9 V.S.A. § 4458; and
- (3) common law actions for fraud or fraudulent misrepresentation.

(g) Nothing in this section shall be construed to limit the right of the commissioner or any agency or instrumentality of the state of Vermont to seek remedies available under any other provision of Vermont statutory law.

(h) In an action under 9 V.S.A. § 4458, compliance by the landlord with the duties required under section 1759 of this title shall create a conclusive presumption of habitability with respect to lead-based paint hazards. However, if a child under the age of six who occupies the dwelling is lead poisoned as defined in subdivision 1751(b)(16) of this title, this

presumption shall be rebuttable, not conclusive. Presumptions under this subsection shall be limited to actions based on a breach of the warranty of habitability under 9 V.S.A. § 4458.

(i) This section shall apply only to actions arising from acts or omissions that occur on or after July 1, 1996. (Added 1995, No. 165 (Adj. Sess.), § 8.)

#### **§ 1762. Secured lenders and fiduciaries; liability**

(a) A person who holds indicia of ownership in rental target housing or a child care facility furnished by the owner or person in lawful possession, for the primary purpose of assuring repayment of a financial obligation and takes full legal title through foreclosure or deed in lieu of foreclosure or otherwise shall not be liable as an owner of the property for injury or loss claimed to be caused by exposure to lead of a child on the premises, provided that, on or before the 120th day after the date of possession, the person:

(1) performs essential maintenance practices as required by section 1759 of this title; and

(2) fully discloses to all potential purchasers, operators or tenants of the property any information in the possession of such person or the person's agents, regarding the presence of lead-based paint hazards or a lead-poisoned child on the property and, upon request, provides copies of all written reports on lead-based paint hazards to potential purchasers, operators or tenants.

(b) The immunity provided in subsection (a) of this section shall expire 365 days after the secured lender or fiduciary takes full legal title.

(c) A person who holds legal title to rental target housing or a child care facility as an executor, administrator, trustee or the guardian of the estate of the owner and demonstrates that in that fiduciary capacity does not have either the legal authority or the financial resources to fund capital or major property rehabilitation necessary to conduct essential maintenance practices shall not be personally liable as an owner for injury or loss caused by exposure to lead by a child on the premises. However, nothing in this section shall limit the liability of the trust estate for such claims and those claims may be asserted against the trustee as a fiduciary of the trust estate. (Added 1995, No. 165 (Adj. Sess.), § 9.)

#### **§ 1763. Public financial assistance; rental target housing and child care facilities**

Every state agency or instrumentality that makes a commitment to provide public financial assistance for the purchase or rehabilitation of rental target housing or child care facilities shall give priority to projects in which the property is lead free, or lead-based paint hazards have been or will be identified and controlled and have passed or will pass an independent dust clearance test that determines that the property contains no lead-contaminated dust prior to occupancy or use. Priority rental target housing projects may include units occupied by severely lead-poisoned children and units in a building that are likely to contain lead-based paint hazards. For purposes of this section, "public financial assistance" means any grant, loan or allocation of tax credits funded by the state or the federal government, or any of their agencies or instrumentalities. (Added 1995, No. 165 (Adj. Sess.), § 10.)

#### **§ 1764. Lead inspectors; financial responsibility**

The commissioner may require that a licensee or an applicant for a license under section 1752(d) of this title provide evidence of ability to properly indemnify a person who suffers damage from lead-based paint activities such as proof of effective liability insurance coverage or a surety bond in an amount to be determined by the commissioner which shall not be less than \$300,000.00. This section shall not restrict or enlarge the liability of any person under any applicable law. (Added 1995, No. 165 (Adj. Sess.), § 11.)

### **§ 1765. Liability insurance**

(a) If the commissioner of banking, insurance, securities, and health care administration determines that lead-based paint hazards have substantially diminished the availability of liability insurance for owners of rental property or child care facilities and that a voluntary market assistance plan will not adequately restore availability, the commissioner shall order liability insurers to provide or continue to provide liability coverage or to participate in any other appropriate remedial program as determined by the commissioner, provided the prospective insured is otherwise in compliance with the provisions of this chapter.

(b) A determination pursuant to subsection (a) of this section shall be made by the commissioner after a hearing held in accordance with 3 V.S.A. chapter 25. Upon a finding that emergency action is required to protect the public health, safety or welfare, the commissioner shall issue an appropriate summary order pending completion of administrative proceedings. No order issued under this section may be stayed pending appeal. (Added 1995, No. 165 (Adj. Sess.), § 12; amended 1995, No. 180 (Adj. Sess.), § 38 (a).)

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